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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Michael Kirby, submitted in accordance with Commission resolution 1995/55

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I. INTRODUCTION

1. On 23 November 1993, a Special Representative for human rights in Cambodia, Mr. Michael Kirby (Australia), was appointed to undertake the tasks set out in Commission on Human Rights resolution 1993/6 of 19 February 1993. These tasks include:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

2. Pursuant to the request of the General Assembly in resolution 48/154 of 20 December 1993, the Special Representative has reported successively to the General Assembly at its forty-ninth session (A/49/635) and fiftieth session (A/50/681) and to the Commission on Human Rights at its fiftieth (E/CN.4/1994/73 and Add.1) and fifty-first (E/CN.4/1995/87 and Add.1) sessions.

3. The Commission on Human Rights at its fifty-first session, by resolution 1995/55 of 3 March 1995, inter alia, requested the Special Representative to report to the Commission at its fifty-second session. The present report is submitted in accordance with that request.

4. The General Assembly, in its resolution 50/178 of 22 December 1995, entitled "Situation of human rights in Cambodia", requested the Secretary-General to assure the protection of the human rights of all people in Cambodia. The Assembly took note with appreciation of the most recent report submitted by the Special Representative of the Secretary-General on the situation of human rights in Cambodia and endorsed his recommendations and conclusions, including those aimed at ensuring the independence of the judiciary and the establishment of the rule of law, good governance, freedom of expression and the promotion of an effective functioning multi-party democracy.

5. The General Assembly noted that communal elections were due to be held in 1996 or early 1997 and National Assembly elections in 1998, and urged the Government of Cambodia to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, stand for election, take part freely in a representative government and freedom of expression, in accordance with the principles set out in paragraphs 3 and 4 of annex 5 to the Agreement signed in Paris on 23 October 1991.

6. The General Assembly requested the Special Representative, in collaboration with the office in Cambodia of the Centre for Human Rights, to continue his evaluation of the extent to which the recommendations made by the Special Representative in his report, and those contained in his previous reports, were followed up and implemented, and strongly encouraged the Government of Cambodia to continue to cooperate with the Special Representative.

7. The General Assembly also requested the Secretary-General to provide all necessary resources, from within the regular budget of the United Nations, to enable the Special Representative to continue to fulfil his tasks expeditiously.

8. The General Assembly expressed grave concern about the atrocities that continued to be committed by the Khmer Rouge, including the taking and killing of hostages, and other deplorable incidents detailed in the reports of the Special Representative.

9. The General Assembly also expressed grave concern about the serious violations of human rights as detailed by the Special Representative in his report, and called upon the Government of Cambodia to prosecute, in accordance with due process of law and international standards relating to human rights, all those who had perpetrated human rights violations.

10. The General Assembly expressed particularly grave concern at the comments made by the Special Representative concerning the reluctance of the courts to charge members of the military and other security forces for serious criminal offences, and encouraged the Government of Cambodia to address this problem, which in effect placed persons in authority above the principle of equality before the law.

11. The General Assembly expressed grave concern at the devastating consequences and destabilizing effects of the indiscriminate use of anti-personnel land-mines on Cambodian society, encouraged the Government of Cambodia to continue its support and efforts for the removal of those mines, and welcomed the intention of the Government of Cambodia to ban all anti-personnel land-mines.

12. The General Assembly called upon the Government of Cambodia to ensure the full observance of human rights for all persons within its jurisdiction in accordance with the International Covenants on Human Rights and other human rights instruments to which Cambodia is a party.

13. The General Assembly requested the Secretary-General to report to it at its fifty-first session on the recommendations made by the Special Representative on matters within his mandate and decided to continue its consideration of the situation of human rights in Cambodia at its fifty-first session.

II. SEVENTH MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA (6-16 JANUARY 1996)

14. The Special Representative, in accordance with the previous practice, took the occasion of his seventh mission to Cambodia (6-16 January 1996) to visit the province of Rattanakiri in north-eastern Cambodia. The programme of the seventh mission is contained in annex I to the present report.

15. During his visit the Special Representative paid particular attention to vulnerable groups, notably women, including women subjected to prostitution, and persons belonging to minorities, in particular indigenous peoples.

16. The Special Representative wishes to express his appreciation to the Government of Cambodia for the access which was provided to many government officials. During his seventh mission he met with Ministers, the Governor of Rattanakiri Province, many national and local officials, as well as with representatives of non-governmental organizations (NGOs) and minorities, and with individuals. He wishes to express his special thanks for the assistance given before and during his visit to Rattanakiri by the Cambodian Rehabilitation and Regeneration Project (UN/OPS) (CARERE), Coopération internationale pour le developpement et la solidarité (CIDSE), Health Unlimited and the International Development Research Centre (IDRC) of Canada. The Special Representative was granted the great honour of an audience on 16 January 1996 with His Majesty Preah Bat Samdech Preah Norodom Sihanouk Varman, King of Cambodia. His Majesty's constitutional position as protector of rights and freedoms and guarantor of international treaties ratified by Cambodia, as well as his many interventions in the defence of human rights, have continued to encourage and inspire the work of the Special Representative. Unfortunately, owing to His Majesty's duty to travel overseas, the audience was cancelled. However, the Special Representative has, by letter, reported to the King on his visit and on the matters contained in this report.

III. RECOMMENDATIONS OF THE SPECIAL REPRESENTATIVE FOLLOWING THE SEVENTH MISSION

A. Right to health

17. The Special Representative welcomes the publication by the Government of Cambodia of the survey of health achievements for 1995 and of health objectives for 1996. In particular, he welcomes the increase of 60 per cent in the health budget of Cambodia for 1996 and the development of a new district health system. He also welcomes the elaboration of regulations, in particular the Pharmacy Law, to control private pharmacies to correct defects in current arrangements cited by him in earlier reports. He endorses the priority activities designated by the Ministry of Health for 1996 and congratulates the Ministry for the publication of its achievements and objectives so as to allow public discussion and comment.

18. The Special Representative again expresses his concern about the spread of HIV/AIDS in Cambodia. He notes that the World Health Organization has estimated that, as of 1995, 50,000 to 90,000 people in Cambodia may have HIV antibodies and that this is considered to be a conservative estimate. Eighty-six cases of AIDS and nine confirmed deaths have been reported as of the end of 1995. He expresses the hope that the establishment of UNAIDS, the new joint United Nations programme on AIDS, from 1 January 1996 will afford new sources of assistance and technical advice to the Government of Cambodia. He welcomes the formation in Cambodia of the United Nations Agency HIV/AIDS Technical Working Group. He notes with appreciation the surveys of attitudes to sexuality amongst young Cambodians undertaken on behalf of the Cambodian Women's Development Association (CWDA). He recommends that this document be used in developing realistic and effective strategies to combat the spread of HIV/AIDS and other STDs in Cambodia. He welcomes and endorses the initiatives of the United Nations Population Fund (UNFPA) in Cambodia and encourages its

particular focus on projects funded by it on HIV, AIDS, sexually transmitted diseases, domestic violence, birth spacing and other reproductive health programmes.

19. The Special Representative welcomes the agreement of His Royal Highness Samdech Krom Preah Norodom Ranariddh, First Prime Minister, in 1995, to accept the position of Chairman of the National AIDS Committee, as recommended by the Special Representative. He also welcomes the emphasis on education in the draft National AIDS Policy which was being completed in December 1995.

20. The Special Representative notes the extremely high incidence of malaria in the Rattanakiri Province. He welcomes the work in the province being done by two NGOs, Health Unlimited and the Catholic Office for Emergency Relief and Refugees (COERR). He recommends that the Cambodian Government pay particular attention to the development and strengthening of the national anti-malaria programme. WHO and the numerous health organizations involved in medical assistance should continue to cooperate with the Government of Cambodia in a renewed attack on the very high incidence of malaria in the northern provinces of the country.

21. The Special Representative recommends that the acute health crisis in Cambodian prisons (see sect. F below), particularly regarding tuberculosis and scabies, be addressed urgently by the Government of Cambodia. In this regard, the Special Representative recommends that the reported problems of jurisdiction between the Ministry of Health and the Ministry of the Interior in dealing with the health problems in the prisons be solved, if necessary in consultation with the Cambodia office of the Centre for Human Rights and with the assistance of appropriate donor countries and agencies. The Special Representative encourages the Government and human rights NGOs to take an active interest in this area.

B. Cultural rights

22. The Special Representative welcomes the adoption by the National Assembly, on 21 December 1995, of a Law on Cultural Property. He notes that the World Heritage Committee of the United Nations Educational, Scientific and Cultural Organization on 5 December 1995 approved the permanent listing of the Angkor temples in the World Heritage List on the expectation that the law would be passed. The Special Representative congratulates the Government of Cambodia on the passage of the law and commends UNESCO for the technical advice and assistance provided by it.

C. Right to education

23. The Special Representative welcomes the increase of 8 per cent over the 1995 allocation in the share of the national budget for 1996 devoted to education, and encourages a further increase. He also welcomes the emphasis on education for human rights, a consideration emphasized by speakers at the Human Rights Day celebration organized in Phnom Penh on 13 December 1995 by the Cambodia office of the Centre for Human Rights. A message was sent on that occasion by His Majesty King Norodom Sihanouk. Speeches were made by the Chairman of the National Assembly, His Excellency Samdech Chea Sim, who

represented the King, and by His Royal Highness Samdech Krom Preah Norodom Ranariddh, First Prime Minister. The latter reviewed the large number of international human rights conventions which Cambodia ratified since 1992. Education curricula should continue to be developed to describe and explain to Cambodian schoolchildren the terms and importance of Cambodian laws and international human rights instruments.

D. Right to a healthy environment and right to sustainable development

24. The Special Representative welcomes Cambodia's accession, on 29 September 1995, to the United Nations Convention on Biological Diversity. He notes the commitment thereby undertaken, by article 10, to "integrate consideration of the conservation and sustainable use of biological resources into national decision-making", to "adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity" and to "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements". The Special Representative recommends that the Government of Cambodia review its laws and policies, and adopt new laws and policies, which achieve the foregoing and also which "encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources".

25. The Special Representative recommends, in accordance with article 14 (a) of the Convention, that Cambodia introduce appropriate procedures, required by law, for environmental impact assessments to be conducted of all proposed projects that are "likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures".

26. The protection of the environment is especially important in Cambodia because concessions for logging and agribusinesses, in addition to their environmental impact, may have large potentially detrimental consequences for indigenous communities of minority ethnic groups living in remote areas of Cambodia such as those the Special Representative visited during his seventh mission in Rattanakiri Province. Such communities are dependent on their environment for their food, cultures and ways of life.

27. The Special Representative recommends that the Government of Cambodia prepare and propose to the National Assembly a coherent body of environmental law. He welcomes the draft Law on Environmental Protection and Natural Resource Management presented to the Council of Ministers and the commitment to issue sub-decrees to protect Cambodian forests. He recommends that the draft Law be reviewed by the Cambodia office of the Centre for Human Rights, in consultation with other United Nations agencies and international, governmental and non-governmental organizations, to ensure its compatibility with the Convention on Biological Diversity and with other international human rights instruments to which Cambodia is a party. The office should report its findings to the Government of Cambodia. In particular, it should address whether there is a need to strengthen the provisions for environmental impact assessments of major developmental projects having environmental significance.

28. The Special Representative welcomes the "First State of the Environment Report 1994" prepared by the Ministry of Environment in association with the United Nations Development Programme and other cooperating agencies. He notes the conclusion that effective forest policy and management plans are not yet in place in Cambodia. He urges the preparation of such policy and plans. He endorses the priority areas for action identified in the report and the importance of following up the State of the Environment reports. He recommends that the Ministry of Environment be given full support by the Government of Cambodia in the discharge of its functions. He endorses the statement of His Royal Highness the First Prime Minister at the celebration of Human Rights Day on 10 December 1995 that human rights and economic development should occur "side by side". The repeated statements of His Majesty the King in defence of the environment of Cambodia and warning against the potentially devastating consequences of timber logging without effective guarantees for reforestation are most warmly appreciated by the Special Representative. 1/ The resumption of unrestricted logging in the forests of Cambodia would have profound consequences on the run-off of topsoil into the rivers whose sources are the tributaries which run through Cambodia's forests. The impact of flooding and draught downstream, the modification of Cambodia's hydrography, the increase in soil erosion and the disturbance of fish and other wildlife must be carefully considered in evaluating proposals for the granting of development concessions and in establishing the conditions for a sustainable forest policy. The Special Representative welcomes the collaboration between the Royal Cambodian Government and UNDP, the World Bank and Food and Agriculture Organization in conducting a forest policy review and the additional assistance extended by UNDP and FAO regarding an inventory of Cambodia's forests. He recommends that, when produced, the findings emanating from these exercises be published in order to promote public debate and awareness.

29. The Special Representative recommends that the Royal Government make public all approved concessions for logging or agribusiness granted by it or awaiting decision by the Government. He notes that, according to the international environmental NGO Global Witness, 2/ 11 applications for concessions have been approved and 19 applications are awaiting the Government's decision, affecting a reported combined area of 6.5 million hectares. He has no way of checking these claims as the concessions and their conditions have not at present been made public. The terms of the contracts and the provisions for and guarantee of reforestation should be made public for informed community debate and as an assurance of the financial probity and transparency of the arrangements. The procedures for the granting of such concessions should always be transparent and publicly known. The criteria applied should be provided for by law, publicly revealed and reported to the National Assembly. The application of environmental impact assessments under a law enacted by the National Assembly, and enforced by the Ministry of Environment, is a most urgent priority.

30. The Special Representative endorses the opinion of the Ministry of Environment that it is essential to encourage community participation in forest policy and agribusiness issues in order to provide the political and economic culture necessary to safeguard the fragile environment of Cambodia. This can only be achieved if there is greater openness than there has been in the past.

31. The Special Representative recommends that the Law on Environmental Protection provide for written guarantees by concession holders and licensees supported by:

(a) Setting out the steps taken or envisaged to ameliorate any negative impact on the environment and on persons living in the areas concerned;

(b) Thorough and professional management plans;

(c) Detailed evaluation of their impact, if applicable, upon minority communities;

(d) Adoption, where applicable, of policies of selective rather than clearance logging;

(e) Provision of enforceable guarantees, with penalties, to ensure that environmental requirements are properly complied with;

(f) Consultation with interested national and international organizations, NGOs and affected persons who will, in some cases, be able to advise the Cambodian Government on the acceptability, according to international standards, on the bona fides of applicants and their proposals for timber and other agricultural concessions and licences in Cambodia.

32. The Special Representative warmly supports the training abroad of Cambodian officials in the modern techniques of environmental assessment. The support of donor countries and agencies for such training is encouraged.

33. The Special Representative welcomes the establishment of the National Environment Steering Committee, composed of representatives of relevant departments, to integrate environmental and national resource considerations, to review and comment on the National and Regional Environmental Action Plans and to submit the former to the Council of Ministers, and to manage the Environmental Fund. He recommends that the Committee work closely with interested national and international organizations and make public its procedures and the criteria for the performance of its normative functions.

E. Independence of the judiciary and the rule of law

34. The Special Representative commends the training provided by the Ministry of Justice, with the assistance of French bilateral cooperation and the Lyons Bar, which resulted in the graduation of 29 lawyers; 22 of them decided to practise law and joined the independent Cambodian Bar Association which was established on 16 October 1995, composed of 38 members who freely elected their President. The Special Representative urges donors to assist the new Bar Association, which will be responsible for the training, supervision and professionalization of a new generation of Cambodian lawyers, who will be crucial to the promotion and protection of human rights and the establishment of the rule of law in Cambodia.

35. Once again, the Special Representative calls attention to:

(a) The inadequacy of judicial salaries - approximately 50,000 riels (US$ 20) a month, self-evidently insufficient to ensure the effective independence of the judiciary and that judicial officers are removed from the risks and appearances of corruption or involvement in business dealings incompatible with their judicial office;

(b) The failure of the Supreme Council of Magistracy to meet as provided by law and envisaged by the Constitution;

(c) The failure to appoint the members of the Constitutional Council which is an essential institution for safeguarding the rule of law and for identifying any unconstitutional provisions in laws enacted by the National Assembly;

(d) The failure to repeal article 51 of the Statute on Civil Servants, as called for by the Special Representative in his last report (para. ...) in order to address urgently the problem of impunity of civil servants, including members of the military.

36. The Special Representative is pursuing his own further inquiries in relation to (a) above. He strongly recommends the initiation of the two Councils referred to in (b) and (c) without further delay.

37. The Special Representative expresses his concern about reports of an attack on 28 December 1995 by a group of approximately 200 persons against the provincial court of Kampot Province. He requests the Government to investigate these reports and the Cambodia office of the Centre for Human Rights to report to him on the incident and to make recommendations for follow-up action.

F. Prisons and other custodial institutions

38. The Special Representative expresses his thanks for the continued expressed concern of His Majesty the King in the condition of Cambodia's prisons and particularly for His Majesty's statement on 5 January 1996 calling for urgent attention to the rebuilding of Cambodia's dilapidated prisons so that they will conform to international standards. The Special Representative commends to donor countries and agencies assistance to this end to the Government of Cambodia. He recommends that the review of Cambodia's prisons conducted by Australian consultants be published widely and that the Cambodia office of the Centre for Human Rights prepare a priority programme to place before donors with a view to the improvement in the appalling conditions which exist in most Cambodian prisons.

39. The Special Representative urgently recommends that action be taken to address the acute health crisis in several Cambodian prisons and in particular the T5 prison (Trapeang Plong) in Kampong Cham. He recommends that WHO and other relevant agencies give full assistance to the Ministry of the Interior, the Ministry of Health and the National Tuberculosis Programme to address the endemic, and largely untreated, health problems in Cambodia's prisons, notably tuberculosis, scabies, malnutrition, malaria and typhoid. The provision of a

means of ambulance or like transport for urgent cases of prison illness in T5 prison should have the highest priority as should the provision of essential medicines to all prisons. A visit to T5 prison should be included on the agenda of the next visit of the Special Representative.

40. The Special Representative continues to receive reports of the use of excessive and uncivilized punishments in Cambodian prisons for alleged infractions of prison discipline. The use of dark cells as punishment, shackles and occasional beatings, reduction of food rations and collective punishments continue to be reported in relation specifically to T5 prison in Kampong Cham. The Government of Cambodia should therefore take urgent and stern administrative action to prevent departures from acceptable conduct recurring and to provide redress for those prisoners who have suffered as a consequence.

41. The Special Representative once again calls upon the Government and the National Assembly urgently to:

(a) Propose and secure, in consultation with the Cambodia office of the Centre for Human Rights and relevant human rights NGOs, the enactment of laws and regulations so that the conduct of prisons is brought under the rule of law. Such laws and regulations should be consistent with Cambodia's international human rights obligations. In this regard, the Special Representative recommends that the Ministry of the Interior expedite the adoption of the draft Prison Law and the prison regulations that are currently being considered by it;

(b) Secure such administrative reforms as are necessary, including the separation of the prison staff from the national police so as to secure a manifestly impartial administration of the prisons.

G. Freedom of expression

42. The Special Representative notes that the Press Law enacted by the National Assembly is now in force. Proceedings brought prior to the enactment of the Press Law against the editors of the Khmer language newspapers New Liberty News and Voice of Khmer Youth have resulted in the imposition of prison terms for articles and cartoons involving the expression of political opinions. Proceedings against the editor-in-chief of the Khmer language newspaper Khmer Ideal resulted in the imposition of a substantial fine which will be converted to a prison term if not paid. These cases are currently awaiting hearing of appeals to the Supreme Court. The Special Representative urges the Government of Cambodia and its agencies to exercise restraint in the prosecution of cases against journalists which, in the past at least, appear invariably to have resulted in prison terms. The chilling effect of such sanctions upon freedom of expression is obvious. By reason of the adoption of the new Press Law the basis of the convictions and sentences imposed in the foregoing cases has been changed. The former law has been repealed, although without retroactive effect. Upon the conclusion of the court proceedings, if the question is still relevant at that time, the Special Representative recommends that consideration be given by the Government of

Cambodia to advising His Majesty the King to exercise his constitutional prerogative of amnesty to prevent the imprisonment of journalists for material published by them.

43. The Special Representative continues to receive many complaints and objections concerning the independence of the media from Government control in Cambodia. The complaints concern:

(a) Violence and alleged violence and threats to journalists and media offices, particularly the attacks against the offices in Phnom Penh of Monaseka Khmer on 2 June 1995, Morning News on 8 September 1995, and New Liberty News on 23 October 1995, and the apparent lack of official investigation into these and other previously reported attacks against journalists as raised in previous reports of the Special Rapporteur;

(b) Intimidation of printing businesses to discourage the printing of journals which are sometimes critical of the Government or of particular members of it;

(c) Official control of the electronic media (radio and television) and the absence of provision for the expression in such media of divergent viewpoints;

(d) The granting of new television licences to political parties in the Government of Cambodia or to persons associated with them, without a guarantee of access in such media for opinions and news critical of or different from those of the Government, and the consideration of two other applications without such guarantees for the expression of diverse opinions.

44. The Special Representative will continue to monitor such allegations and the situation as it affects the freedom of the media and of expression in Cambodia. Fairness requires it to be said that the print media, particularly the foreign language print media, continue to be published with a high degree of freedom; that the number and variety of journals published in Cambodia continue to be high; and that the standards of reporting, particularly in some Khmer language journals, continue (despite efforts by the United Nations Educational, Scientific and Cultural Organization and other bodies) to be very poor, provoking occasional justifiable complaints on the part of the Government and individual members of it. The Special Representative, following His Majesty the King, recommends that some degree of forbearance must be displayed by persons holding public office, even in the face of outrageous and false allegations, as the price that must be paid in a tolerant modern society accepting diverse viewpoints and freedom of expression.

H. Right to be elected and to take part in government

45. The Special Representative calls attention in particular to:

(a) The principles for the new Constitution of Cambodia contained in annex 5 to the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict signed in Paris on 23 October 1991. In particular, he highlights the terms of paragraph 5 stating that Cambodia "will follow a system of liberal democracy on the basis of pluralism. It will provide

for periodic and genuine elections ... with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process";

(b) The provisions of article 51 of the Constitution of the Kingdom of Cambodia which provide for the Kingdom to adopt "a political regime of liberal democracy and pluralism". Article 42 guarantees the "right to form associations and political parties" and that "these rights shall be specified in law";

(c) General Assembly resolution 50/178 (para. 6), in which the Assembly urged the Government to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, to stand for election, to take part freely in a representative government and to enjoy freedom of expression.

46. The Special Representative recommends that the Government of Cambodia, in all of its actions in or in connection with the conduct of communal elections in 1996 or early 1997 and National Assembly elections in 1998, should conform to the foregoing principles.

47. The Special Representative recommends that, without delay, an Electoral Law conforming to the foregoing commitments be enacted to facilitate the establishment of political parties free from unreasonable impediments which frustrate the attainment of true multi-party democracy in Cambodia.

48. The Special Representative specifically recommends that the impediments to the registration of the Khmer Nation Party (KNP) and the different factions of the Buddhist Liberal Democratic Party (BLDP) party be removed forthwith so that their members and supporters may exercise, without interference or inhibition, the political freedoms and right of free association guaranteed by the Cambodian Constitution and contemplated by the Paris Agreements. The Special Representative welcomes the call of His Excellency the Second Prime Minister on 8 January 1996 for the prompt formation of new political parties so that they may participate in the forthcoming elections. Real participation in multi-party democracy and due observance of the terms of the Constitution require facilitating the registration of political parties. Neither legal nor administrative impediments should contradict the constitutional guarantees mentioned above. It is obvious that the failure to enact a law to "specify" the rights as guaranteed by the Constitution cannot be used as an excuse to frustrate the full lawful operation of political parties in Cambodia. The absence of such a law did not prevent 20 political parties being formed before, during and after the Paris Agreements to contest the election supervised by the United Nations. The Special Representative regards the removal of apparent impediments to the immediate registration of KNP and factions of BLDP as a litmus test for the genuine commitment of the Royal Government of Cambodia to the pluralism guaranteed by the Paris Agreements and the Constitution of Cambodia.

49. The Special Representative recommends that the relevant authorities in Cambodia investigate, without delay, incidents of violence and intimidation directed at parties and groups of their supporters which are not part of the present government coalition. In particular, the Special Representative urges

the most rigorous and energetic attempts to bring to justice those responsible for the two grenade attacks on 30 September 1995 against the premises of the faction of BLDP led by His Excellency Samdech Son Sann and against a pagoda housing the faction's supporters. There cannot be pluralistic democracy or fulfilment of Cambodia's commitment to "full and fair opportunity to organize and participate in the electoral process" where the lawful expression of dissenting and opposition views is suppressed, the right to organize political parties is impeded and violence against political opponents goes unpunished and apparently uninvestigated. The Special Representative regards the vigorous investigation of all acts of political violence against any political interest or individual as a primary obligation of the Cambodian Government. He recommends that its responsibility be fully discharged.

50. The foregoing represents the minimum requirements for the conduct of fair and free elections. But there is much more. The Special Representative has received numerous complaints regarding the difficulties which dissenting or opposition viewpoints have encountered in securing access to the electronic media (radio and television) within Cambodia. Such free and fair access was guaranteed by the United Nations itself during the elections conducted by the United Nations Transitional Authority in Cambodia (UNTAC). But United Nations facilities will not be available in the forthcoming elections. The Special Representative has been informed that the granting of two new television licences is currently under consideration by the Ministry of Information. It is essential that a condition for the granting of licences for broadcasting during an election campaign should be neutrality of the broadcaster and provision of a fair opportunity to competing interests to have access to the electronic (and other) media. The granting of broadcasting licences to political parties and personalities or interests associated with them should not be used as an opportunity to manipulate public opinion or to prevent the expression of lawful dissenting or opposition points of view. The law should provide for access to the broadcasting media by candidates and political parties and groups, NGOs and individuals so that the principle of pluralism contained in the Paris Agreement, to which the Cambodian leaders put their signatures, and in the Cambodian Constitution is translated into reality. The Special Representative considers that this will be another litmus test of the commitment of the Royal Government of Cambodia to the constitutional system of pluralist democracy which the Paris Agreements introduced.

51. The Special Representative notes, for example, that the dissenting opinions of His Royal Highness Prince Norodom Sirivudh and of His Excellency Mr. Sam Rainsy have not been allowed access in the broadcast media. This would be astonishing in a democratic country with broadcasting media accessible to Government and opposition alike. Each personality is a distinguished citizen, was a member of the National Assembly and a former Minister. The Prince is in addition a member of the Royal Family and at the time of his arrest and until his exile was the Secretary-General of the Front Uni National pour un Cambodge Indépendent, Neutre, Pacific et Coopératif Party, the political party which had won the largest popular vote in the United Nations supervised election.

52. The Special Representative once again reminds the Royal Government of the requirements of international human rights law, as well as the terms of the Paris Agreements and the Cambodian Constitution itself. He recommends that

the Royal Government ensure that the broadcast media provide full and fair access to diverse viewpoints, particularly in the run-up to the elections. This should not be limited to a short formally declared election period so designated by the Government but should cover an extended interval when campaigning in fact takes place. No broadcast licence should be granted by the Government to any individual or political party which will not provide such facilities for divergent viewpoints to be heard. The Special Representative welcomes the assurance of the Secretary of State for Information that publicly owned radio and television stations will observe strict neutrality during the election period, affording each political party equal broadcast time in order to canvass the support of the voters. The same should apply to the television channel controlled by the Ministry of Defence.

53. For the conduct of the forthcoming elections, the Special Representative welcomes the 11-point plan of the Co-Minister of the Interior, His Excellency Sâr Kheng, announced at a seminar in October 1995 on electoral systems and administration, and endorses the recommendations of the Human Rights Action Committee which were transmitted to the Co-Prime Ministers and Co-Ministers of the Interior in January 1996. Specifically, he recommends that:

(a) The draft Electoral Law should be made available without delay for NGO and public discussion and commentary before it is considered by the National Assembly;

(b) Facilities be provided for neutrally expressed voter education and training;

(c) The conduct of the election be monitored by local and international NGOs in cooperation with a National Election Commission to be established by law;

(d) NGO monitoring of the ballot count and post-election conduct be facilitated;

(e) Full participation be ensured for independent candidates who are not associated with any political party;

(f) Armed persons should be banned from polling stations during the voting.

54. The Special Representative urges the Royal Government to set in train without delay consultations with the Representative of the Secretary-General in Cambodia, UNDP, the United Nations Electoral Assistance Division, the Inter-Parliamentary Union and other public and private bodies concerned in electoral integrity and fairness. The communal elections in 1996-1997 provide an opportunity to ensure that difficulties are fully addressed before the National Assembly elections take place in 1998.

55. The Special Representative will continue to monitor the electoral preparations in Cambodia, taking into account the commitment of Cambodia in the Paris Agreements and the terms of article 5 of the Third Agreement (Agreement Concerning the Sovereignty, Independence, Territorial Integrity,

and Inviolability, Neutrality and National Unity of Cambodia) and the facilities provided therein. The free and fair election of local and national governments is not only an assurance that the Cambodian people can enjoy the human rights to participate in government freely, to associate freely and to be elected, nor is it only a means of ensuring compliance with Cambodia's international obligations and with its own Constitution. It is also, as experience elsewhere demonstrates, the only sure means to ensure the sustained respect for the entire variety of human rights which legitimate and accountable governments are much more likely to uphold and protect than the alternative.

I. Vulnerable groups, including women, children and minorities

1. Women

56. The Special Representative welcomes the establishment of the NGO Committee on the Convention on the Elimination of All Forms of Discrimination against Women with whose members he met twice during his seventh mission. He recommends that the Government of Cambodia complete without delay its report on the Convention, which Cambodia has ratified, to the Committee on the Elimination of Discrimination against Women (CEDAW). He recommends that the Committee remain in operation after completion of the CEDAW report to assist and stimulate the Government and the National Assembly to redress laws and practices in Cambodia adversely affecting or discriminating against women. He also welcomes and commends the work of the Working Group on Cambodian Women's Rights.

57. The Special Representative welcomes the announcement during his seventh mission of the proposed appointment of the first woman to hold the office of Secretary of State (or Minister) for Women's Affairs (Mrs. Sokhua Mu Leiper). He recommends that affirmative steps be taken well in advance of the 1997 communal elections to increase the number of women participating in politics in Cambodia (at present only 7 of 120 members of the National Assembly are women). The major political parties should establish and advertise quotas or targets for women candidates for elected office; an immediate target of 20 per cent of female candidates should be achievable.

58. The Special Representative recommends that programmes broadcast by the media and news articles should feature the achievements of women in public life in Cambodia. Such programmes would provide role models and help to alter the stereotype affecting even the perception that some Cambodian women themselves have of their own rights and privileges. He notes the UNESCO report on the role of women in Cambodian media published in October 1995. Foreign donors should be encouraged to provide study tours to selected Cambodian women who participate in public affairs to provide them with perspectives and with contacts with relevant foreign women's groups concerned with policy development and equal opportunity.

59. The Special Representative calls attention not only to the Women's Convention but also to the Declaration on the Elimination of Violence against Women adopted by the General Assembly in its resolution 48/104 as well as to General Recommendation 19 adopted by CEDAW. The Cambodian Government is required by the Declaration to exercise "due diligence to prevent, investigate

and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private actors" (art. 4 (c)).

60. The Special Representative notes with regret the delays in the passage of the draft Women's Code. He recommends that priority areas be chosen for particular attention and for the formulation of draft laws and policies, as set out below.

61. The Special Representative urges that particular attention be given to the provision of an effective law and policies to eliminate domestic violence which take into consideration the recommendations contained in the Declaration on the Elimination of Violence against Women. This law and such policies should:

(a) Provide for the education of women in schools, workplaces and the community as to their rights to resist and seek redress for domestic violence and to have support and assistance in doing so;

(b) Provide for the education of judicial officers, investigating police and court officials (who are mostly male) about the need to respond effectively to and protect women complaining of domestic violence. Such training should include such topics as sexual assault and violence against women in the family context;

(c) Introduce legal restraint orders, issued by judicial officers and enforced by police, to prevent the continuance of domestic violence, with criminal penalties for violations;

(d) Ensure the arrest and prosecution under criminal law of those guilty of domestic violence;

(e) Ensure the training and availability throughout Cambodia of adequate numbers of policewomen to be involved in receiving reports of and investigating instances of domestic violence and ensuring adequate protection of victims;

(f) Provide appropriate legal assistance and for the establishment of shelters and other places of temporary or long-term sanctuary to women subjected to sexual, physical or mental violence.

62. The Special Representative urges that the media be used to combat attitude of tolerance of domestic violence against women and to alert women to their rights and the means of escape and redress. The Special Representative commends the establishment of the Project against Domestic Violence and the establishment of facilities such as the Khemara Shelter for Women Victims of Domestic Violence in Phnom Penh. Such shelters should be established throughout Cambodia. The Special Representative commends such activities to donor countries and agencies for their support. Facilities should be available in such shelters for counselling victims and for family reconciliation in appropriate cases and under proper conditions.

63. The Special Representative calls for the correction of the existing imbalance in female participation in education in Cambodia. He calls for the limitation of class sizes and the inclusion in school curricula of education in human rights and specifically the rights of women to full dignity, participation in public and economic life and to protection from violence of all kinds. Attention should be given to the provision of basic school education in mathematics and sciences in day classes rather than in night classes which girl and women students often find difficult to attend.

64. The Government of Cambodia should review all laws and practices for their compliance with international requirements of non-discrimination on the grounds of sex, including as stated in international instruments which Cambodia has ratified. The Government should conduct this review in close consultation with the NGO community of Cambodian women's organizations and supporting bodies. The Special Representative recommends that the Cambodia office of the Centre for Human Rights offer full technical advice and assistance for the conduct of such a review. The Special Representative urges that the process of compiling Cambodia's reports under the Women's Convention and the Convention on the Rights of the Child be continued and used as a model for other reporting activity. The process of providing data of specific relevance to women and their position and disadvantages in Cambodia society should be continued with enhanced transparency. All existing laws and practices and all those adopted henceforth should be systematically reviewed to ensure that they adequately protect women's rights and that discriminatory provisions prejudicial to women are eliminated.

65. The draft Criminal Code and the draft Code of Criminal Procedure should be reviewed by the Government of Cambodia with the technical cooperation of the Cambodia office of the Centre for Human Rights and women's NGOs to examine the adequacy and appropriateness of their provisions in relation to domestic violence, sexual assault and rape, including rape within marriage. The Special Representative recommends revision by the Government and the National Assembly of the draft Law on Kidnapping and Trafficking of Persons. In its provisions, the draft law should distinguish clearly between the activities of adults and those of minors. The Special Representative welcomes the fact that the draft does not subject adult women engaged in sex work (prostitution) to criminal punishment. They should be afforded education, training, legal or related services and protection of their basic rights. The imposition of criminal sanctions for sexual contact by persons with HIV/AIDS should be avoided. The potential effectiveness of criminal sanctions against brothel owners (as distinct from empowerment of sex workers and education in self-protection, including by the use of condoms) should be explored by the Government of Cambodia in consultation with UNAIDS.

66. The Special Representative recommends that particular attention be given to the situation of women in Cambodia's prisons. The Government of Cambodia, in cooperation with the Cambodia office of the Centre for Human Rights, should conduct a review of and make recommendations and proposals concerning, amongst other subjects, arrangements for pregnant female prisoners to deliver their babies safely and an increase in the number of female prison guards.

67. The Special Representative notes the vital role played by women in the rural economy of Cambodia. He recommends that steps be taken to redress the particular disadvantages of rural women including:

(a) Providing them with improved educational and health facilities;

(b) Providing information on the availability of credit to women in rural communities so as to afford those wishing to take advantage of it greater independence and self-reliance;

(c) Providing advice on and facilities for birth spacing.

68. The Special Representative notes that the overwhelming majority of judicial officers, court staff, local authority officers, and military and police are male. He notes the many complaints of bias against women who come into contact with law enforcement agencies and the courts. He recommends:

(a) The appointment of female prosecutors with particular responsibilities in connection with the investigation and prosecution of cases of violence against women;

(b) The vigorous enforcement of monogamy, in accordance with article 45 of the Cambodian Constitution and article 6 of Cambodia's Family Law, to prohibit remarriage before the termination of an existing marriage by death or divorce but taking into consideration the customary law of the minority ethnic communities. Such a law is necessary to respond to instances, repeatedly reported to the Special Representative, of multiple marriages by "husbands" who then desert or neglect their "former" wives.

69. The Special Representative also notes the particular vulnerability of women in the labour force in cities and towns. The proposed Labour Code should address issues of particular relevance to women. It should:

(a) Introduce requirements for the elimination of unjustifiable discrimination on the grounds of sex, marital status, disability and health status (including pregnancy);

(b) Provide civil remedies against sexual harassment;

(c) Protect the rights of women to organize themselves in independent trade unions;

(d) Introduce occupational health and safety requirements including for reproductive health;

(e) Provide for maternity leave and other entitlements as required by articles 4, 11 and 12 of the Women's Convention and article 46 of the Cambodian Constitution.

70. In his previous report, the Special Representative referred to the particular vulnerability of the squatter communities which has arisen following the prolonged period of war, dislocation and genocide in Cambodia. Women in such communities are self-evidently in an especially vulnerable

situation. The Special Representative recommends that the Government of Cambodia, in consultation with the Cambodia office of the Centre for Human Rights and the Squatters and Urban Poor Federation, the Urban Sector Group and other relevant NGOs, conduct a review of the particular needs of women in squatter communities with a view to developing programmes and laws relevant to their needs. Such communities as the Special Representative has seen suggest that women are particularly liable to desertion, violence and abuse arising out of the extreme stress of such environments because of poverty, frustration and the unpredictability of squatter existence.

71. The Special Representative commends the work of the Cambodia Women's Development Association (CWDA) in providing assistance to women who have been abused and in retraining them in typing, weaving and other skills as demonstrated at the CWDA facility in Phnom Penh. Amongst the women receiving particular help from CWDA are widows, deserted or superseded wives, women victims of land-mines, women factory workers and current and former sex workers. All such women, and others, need help and support and the opportunity of learning new skills to provide greater independence and self-respect. The Special Representative commends the work of CWDA to the Cambodian Government and international donors. In circumstances where other sources of public and private assistance are limited, the work performed by CWDA is deserving of the highest support and praise. In the area of sex workers, the work of CWDA draws attention to the need for renewed efforts to empower sex workers to require the use of condoms to prevent the spread of HIV/AIDS and other sexually transmitted diseases. In the case of factory workers, the information provided suggests the urgent need for a public body or office holder to guarantee and enforce worker entitlements to holiday leave, and to bereavement leave, which is sometimes refused or granted only under unjust and punitive conditions. The appropriate departmental officers should ensure the protection of vulnerable factory workers (mostly women) from such practices as sexual harassment, extremely long hours, dangerous work and the enforced purchase of company uniforms at high cost to the worker.

72. Since available time and space do not allow full justice to be given in this report to the range and importance of the issues concerning the human rights of women in Cambodia, the Special Representative has decided to keep this topic under active consideration. He commends the report "Human Rights of Women in Cambodia" prepared by the Working Group on Cambodian Women's Rights. This report could be used as a platform by a committee composed of representatives of Government, NGOs and United Nations agencies, such as the Beijing Coordinating Committee, to elaborate an action plan for the orderly introduction of reform affecting the human rights of women in Cambodia. The Cambodia office of the Centre for Human Rights should ensure that the proposals put forward in the report conform to relevant international human rights standards and applicable Cambodian law. The issue of women's rights should remain on the programme of the Special Representative for the next mission to Cambodia.

2. Children

73. The Special Representative welcomes the establishment on 20 November 1995 of the Cambodia National Committee for Children (CNCC), as recommended in his previous report to the General Assembly (A/50/681, para. 82). The CNCC is a

coordinating, planning and monitoring body concerned with children's rights, composed of representatives from various ministries. NGOs are observer-members and can be invited by the CNCC to attend its meetings.

74. The Special Representative welcomes the increased recruitment of women police officers and recommends that properly trained women police officers should be assigned to work concerning the protection of children and dealing with child offenders.

75. The Special Representative welcomes the initiatives of the Cambodian Government, the ILO-International Programme on the Elimination of Child Labour, UNICEF and NGOs relevant to the protection of children from sexual and other exploitation including kidnapping, child prostitution and inappropriate adoption practices. He supports the initiatives to train police made by the Australian Federal Police who are experienced in dealing with cases of exploitation of children, and encourages cooperation in this regard with police services in neighbouring countries.

76. The Special Representative calls attention to the particular needs and entitlements of children in ethnic minority communities in Cambodia. Such children, at the crossroads of cultures, should be given the opportunities provided by education and economic progress but in conditions which protect their linguistic and cultural attachments to their ethnic communities. At least some educational facilities and media programmes should be provided for them in their mother tongues.

77. The Special Representative recommends that education about HIV/AIDS and other sexually transmitted diseases should be available in secondary schools throughout Cambodia. The prohibition on such instruction, reported to the Special Representative to be in force in Rattanakiri Province should be withdrawn. Children at or approaching the age of sexual activity and other vulnerable groups should be provided with full information about HIV/AIDS and other sexually transmitted diseases as part of their education. Such information, which should also be made available in minority languages, should include ways of preventing infection. Provincial health authorities should be supported by national authorities in introducing such educational courses without delay.

78. The Special Representative repeats his previous recommendations concerning juvenile justice and the revision of laws relating to children, which have not yet been acted upon.

3. Minorities

79. The Special Representative welcomes the success of the Government in finding a solution to the problem of ethnic Vietnamese fishing families at Chrey Thom (see E/CN.4/1995/87/Add.1, paras. 37 and 38).

80. The Special Representative again calls attention to the apparent defect in article 31 of the Constitution of the Kingdom of Cambodia which, whilst requiring Cambodia to recognize and respect human rights as stipulated in the United Nations conventions ratified by Cambodia, provides that "Every Khmer citizen" shall be equal before the law, and have the same rights, freedoms and

obligations regardless of race, colour, sex, language, religion, belief, political tendency, national origin, social status, wealth or other status. This is to be contrasted with other provisions of the Constitution (e.g. art. 32) which guarantee rights to "all persons". The reference to "Khmer citizen" should be clarified authoritatively at the earliest opportunity. It would be inconsistent with the United Nations instruments and with international human rights law, as well as unacceptably discriminatory, to confine the constitutional protections to Cambodian citizens of Khmer ethnicity. Accordingly, article 31 should be construed to embrace all Cambodian citizens, widely defined, to include persons of all ethnic communities having their established origin within the Kingdom of Cambodia or with other appropriate connections with Cambodia. In the event that article 31 were to be construed as confined exclusively to Cambodian citizens of Khmer nationality, its discriminatory provisions should be immediately deleted by constitutional amendment.

81. The Special Representative calls attention to the inadequacy of the present laws and practices as they affect ethnic minorities within Cambodia. He recommends that the Government of Cambodia review its laws and practices as they affect such minorities to ensure that they conform to United Nations conventions to which Cambodia is a party, including article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities. The Special Representative calls particular attention to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly in its resolution 47/135 of 18 December 1992. He recommends that the Government of Cambodia ask for the cooperation of the Cambodia office of the Centre for Human Rights to conduct a review of current laws and practices of Cambodia to determine whether they conform to international human rights norms. The Centre should provide full technical assistance to the Government in the conduct of such a review. In particular, the review should address the right of minority peoples to enjoy their own culture, to enjoy equal rights to acquire legal title to traditional lands, to profess and practise their own religions and to use their own languages in private and public, to establish and maintain their own associations, to be safeguarded against discrimination, to express their characteristics and to develop their customs and to have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

82. The Special Representative recommends that particular and urgent attention be given to the provision of effective land rights to members of ethnic minority communities in Cambodia. At present they face serious obstacles (including securing the approval of up to eight levels of the administrative hierarchy) in converting their possessory interests in land into legal title. The laws and procedures for securing effective land rights by minority ethnic communities and their members should be radically simplified; appropriate reforms should guarantee community and/or individual rights to land which cannot be overridden by the economic interests of persons or companies pursuing developmental interests in or near to land traditionally used by ethnic minority communities. Nor should the interests of traditional users of land be overridden, including by members of their own communities, except by the freely expressed will of such communities, such will to be manifested through procedures involving full consultation and dialogue

conducted in a transparent manner and according to law. The Special Representative points to particular problems which must be taken into account in the laws and procedures referred to, including:

(a) The complexity of the notion of individual ownership in most, if not all, of the cultures of ethnic minority communities;

(b) The itinerant nature of the agricultural practices carried out within a certain perimeter by such communities who nevertheless maintain close affinity with land and forest which, often hold spiritual as well as material significance to the communities;

(c) The isolation and remoteness of such communities and the absence in several of them of accepted transcriptions of their mother tongues;

(d) The inability of most of these communities to communicate in the Khmer language which increases their vulnerability, in particular vis-à-vis the administration;

(e) The need for ample time for information-sharing, involvement, consultation and discussion of issues affecting their way of life and the survival of their cultures and societies so profoundly;

(f) Their lack of effective representation at the provincial and national levels.

83. The Special Representative recommends that the Government of Cambodia declare the existence of a trust relationship with the members of the ethnic communities in designated remote provinces of Cambodia. His Majesty the King should be asked to accept the position of guarantor of the trust, representing the interests of the members of those communities affected by economic development and environmental changes affecting their habitat. The terms of the trust should include:

(a) The obligation to involve the affected communities in all decisions affecting their interests;

(b) The duty to consult such communities fully in all such matters;

(c) The requirement of transparency of all commercial dealings, contracts and resettlements of populations affecting such communities;

(d) The obligation to provide resettlement acceptable to such communities or to take into consideration adequate economic compensation for any dislocation which is accepted by such communities and to minimize the impact of economic development upon the social and cultural lives of such communities;

(e) The duty to consult and take into consideration particular interests within such communities, especially the interests of women;

(f) The setting up, by educational establishments and radio and television, of facilities for communications links between members of ethnic minorities to ensure the survival of their languages and cultures.

84. The Special Representative welcomes and accepts the assurances of the Government of Cambodia, and particularly of H.E. Dr. Tao Seng Huor, Minister of Agriculture, Forestry and Fisheries, and H.E. Hong Sun Huot, Minister of Rural Development and Chairman of the Inter-Ministerial Committee for the Development of Highland Minorities, that contracts for the economic exploitation of areas of Cambodia inhabited by ethnic minority communities will be executed in conformity with United Nations principles and the foregoing guidelines. He welcomes the assurances that concessions and licences will not be granted and contracts will not be approved or signed by or on behalf of the Government of Cambodia unless they conform to the foregoing and other requirements. However, he calls attention to the instances of alleged derogations from the rights of the Jarai people in the villagers of Saom Thom and Saom Troak which were recounted to the Special Representative during his visit to the plantation concession in the Au Ya Dao district of Rattanakiri Province. He recommends that the complaints of the villages concerning non-consultation, the use of armed guards, the presentation for signature of an unexplained contract, the shooting of cows which wander onto concession areas and the feared endangerment of village survival and the security of traditional sites of graves, pasture and farming land be resolved without delay, justly and according to law. He notes that the relevant company denies these allegations, asserts that consultation occurred and states that, following complaints, a new concession was provided by the Ministry of Agriculture in an area remote from established villages. The provision of proper compensation for derogations from the rights, whether legal or traditional, of the villagers and of all other persons at risk of adverse effects on their economic and other interests must be guaranteed by the laws of Cambodia and the practices of its Government and administration. The Cambodia office of the Centre for Human Rights should cooperate fully in the provision of technical advice and assistance to the Government of Cambodia to help attain the foregoing ends. The Centre should continue its contact with the Jarai people and the relevant company and report to the Special Representative on its investigation.

85. The Special Representative specifically welcomes the instruction by the Minister of Agriculture that there should be an inquiry into the complaints of the Jarai people as stated above. The report of this inquiry should be published. The relevant concession contract or licence (if any) should also be made available for public scrutiny. Lessons should be derived from the experience of the particular case for the laws and practices of Cambodia, its Government and administration both at national and provincial levels. Such implications should be fully discussed with the Inter-Ministerial Committee on the Highland People's Development Project and with relevant international and national NGOs.

86. The Special Representative welcomes the conduct of a series of seminars by CIDSE/Cambodia, IDRC and the Preah Sihanouk Raj Academy, with the participation of many members of the relevant NGO community including the AICF/USA, Health Unlimited, NOVIB and OXFAM and others. He warmly commends to the Government of Cambodia the adoption, without delay, of the recommendations

of the Seminar on Ethnic Communities and Sustainable Development in Northeast Cambodia (29-30 August 1995) calling for the establishment of a National Policy on Ethnic Communities to provide greater clarity and consistency in Cambodia's policy on national ethnic minorities. This should include:

(a) A just land tenure law;

(b) A forest management and natural resources law to protect the fragile ecology of the area;

(c) Support to the cultures of the ethnic communities to ensure their survival;

(d) An appropriate tourism policy;

(e) Development of a national educational curriculum to highlight the history and culture of ethnic communities;

(f) A sustainable development strategy in consultation with the affected communities.

87. The Special Representative recommends that a systematic study be undertaken by the Government of Cambodia, with the assistance and participation of an appropriate academic institution such as the Preah Sihanouk Raj Academy, of the customary laws of Cambodia's minority communities. Such a study should concentrate on recording ethnic communities' customary rules and practices in matters of punishment and of personal relationships. The Cambodia office of the Centre for Human Rights should provide technical advice and assistance to such a study. The acknowledgement and enforcement in defined circumstances of at least some parts of customary law for recognized members of ethnic communities should be studied with a view to the adoption of a legal regime for the recognition of aspects of customary law by the Cambodian legal system. Once again, the Special Representative points out that useful experience is to be derived in this connection from studies performed in other countries concerning the recognition of the laws of indigenous peoples. (See, for example, Australian Law Reform Commission, Aboriginal Customary Law, 1984.)

88. The Special Representative expresses concern about the present draft Law on Nationality approved by the Council of Ministers of Cambodia in December 1995. Whilst welcoming the proposed enactment of a law on nationality for which he has previously called, the Special Representative recommends that the present draft law be revised and refined before enactment. The revision should take into account the following suggestions:

(a) In one view, the present draft restricts citizenship of the Kingdom of Cambodia to persons of Khmer nationality. Any such restriction would be discriminatory and contrary to international human rights law and should be deleted;

(b) The draft should make it clear that members of other ethnic communities, including indigenous people and hill tribes, Chinese, Vietnamese, Cham and Lao having appropriate connection with Cambodia, are eligible, by right, to enjoy Cambodian citizenship;

(c) The draft should also be modified in so far as it provides for proof of citizenship by birth by the production of papers. The absence of such records in many, if not most, cases, arising in large part from the dislocations of Cambodian society, will render such a provision liable to serious abuse and injustice;

(d) The conditions for naturalization are unduly stringent. No recognition is afforded in the draft to the number of years a person has lived in Cambodia prior to enactment of the law. It may effectively exclude, in an unjust way, non-Khmer-speaking ethnic groups with indigenous or other long-term connection with Cambodia from securing Cambodian nationality and citizenship;

(e) The provision for the deprivation of nationality "for insulting the Khmer race" appears to be inconsistent with article 33 of the Cambodian Constitution according to which citizens shall not be deprived of their nationality. It could give rise to serious cases of conflict and misuse in racially charged circumstances. It also appears to be inconsistent with article 31 of the Constitution by permitting citizenship to be removed but only from naturalized citizens;

(f) The administrative discretions allowed by the law are unduly wide and should be controlled in a principled way.

89. The Special Representative recommends that the Government ask for the advisory services and technical cooperation of the Cambodia office of the Centre for Human Rights to help with a review of the draft Nationality Law. The progress of the draft Law will be kept under review by the Special Representative. Appropriate representations have been made by him to the Government of Cambodia in the form of a human rights recommendation.

90. The Special Representative calls attention to the particular needs of women in minority communities. Women, especially those in indigenous communities may often be in the disadvantageous position of traditional subservience and subject to onerous work and child-rearing obligations. The Special Representative notes that this is not always so. For example, in many such communities adult women enjoy significant freedom in their choice of spouse and other rights which are not universal. The Special Representative recommends that the Government of Cambodia introduce sensitively into minority communities, the awareness that women in such communities have human rights which will be upheld. In particular, they have freedom of personal relationships and reproductive rights which must be respected. Such women must be fully consulted and involved in decisions affecting the future of their communities and their economic, cultural and other interests. Such issues should not be disposed of by male members of such communities with the excuse of traditional practices. The Special Representative recommends that

the appropriate NGOs, in consultation with the Cambodia office of the Centre for Human Rights, continue their study of the particular vulnerability of women and girls in traditional indigenous communities.

91. The Special Representative notes the complaints by members of the ethnic communities in Rattanakiri Province that radio and television broadcasts in minority languages have been terminated. Such ethnic communities must rely at present on broadcasts from neighbouring countries. The reintroduction of broadcasts in minority languages should be encouraged by the Government of Cambodia. Such broadcasts should include news programmes, educational programmes concerning cultural issues and programmes of interest to young people so that they may take pride in their languages and cultures and understand their legitimacy and recognized place in Cambodian society. The Special Representative recommends that relevant officials of the Cambodian Ministry of Information and radio and television stations should visit neighbouring countries and other countries whose broadcasting facilities offer broadcasts in minority languages. The Special Representative commends support of such study tours to the attention of international donors. Cambodia, in its activities relevant to the languages and cultures of the ethnic minorities, should avoid the mistakes made by many developed countries and should learn from their belated endeavours to repair those mistakes. The Special Representative feels bound to call to the notice of the Government of Cambodia that the same attitudes towards development and of superiority vis-à-vis indigenous peoples existed in other societies. In particular, the Special Representative expresses his anxiety at the announced proposal to resettle demobilized soldiers in or near districts of Cambodia where minority ethnic communities have traditionally lived. Any such policy of internal migration should be carried out only in a way which respects and protects the rights of the indigenous minorities. The Government and administration of Cambodia should learn from the mistakes of other countries which violated the rights of indigenous peoples in the name of progress and development.

J. Reporting obligations under international human rights instruments

92. The Special Representative continues strongly to urge the Council of Ministers to review the draft report under the International Covenant on Civil and Political Rights prepared by the Inter-Ministerial Committee on Reporting Obligations and to submit it without further delay to the Human Rights Committee in Geneva.

93. The Special Representative commends the continuing efforts of Government officials involved in the drafting of the report under the International Convention on the Elimination of All Forms of Racial Discrimination and, supporting a request made by the Minister of Justice, who chairs the Inter-Ministerial Committee, recommends that the Committee on the Elimination of Racial Discrimination allow a little more time to the Cambodian Government for the completion of this report.

94. The Special Representative also welcomes the information according to which the Government has started to prepare its report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

for which a subcommittee composed of five government officials has been established and the Cambodia office of the Centre for Human Rights requested to provide its technical cooperation.

K. Ongoing technical advice and assistance

95. The Special Representative welcomes the continued support of the Ministries of Defence and the Interior for human rights training programmes for military personnel of the Royal Cambodian Armed Forces and the National Police.

96. The Special Representative reports that the implementation of the technical cooperation activities of the Centre's programme in Cambodia is hampered by the existing rules and procedures of the United Nations Secretariat, which apply to the Centre and its Cambodia office, and by which the Centre has no administrative or financial autonomy. The Special Representative recommends that the Centre's Trust Fund for a Human Rights Education Programme in Cambodia - which is a general Trust Fund - be converted into a technical cooperation trust fund, and further requests that the United Nations Controller assign the Centre for Human Rights as the implementing office so as to allow the Centre to implement its programme in Cambodia effectively and efficiently.

97. The Special Representative notes with appreciation the efforts made in the Centre to support the activities of the Cambodia office despite the administrative framework of the United Nations Secretariat which prevents speedy delivery of technical cooperation activities.

98. Now that a number of experiences have been gained in field offices of the Centre of Human Rights, the Special Representative recommends that a meeting should be arranged at an appropriate time in Geneva to exchange the experiences of field offices and, to prepare guidelines and procedures aimed at enhancing - within United Nations rules and regulations - the efficient operation of such offices. The meeting should take into account the findings and recommendations of the 15th Workshop on the Management of Field Coordination for Senior United Nations System Representatives (ILO International Training Centre, Turin, 22-30 June 1995).

IV. EVALUATION OF THE EXTENT TO WHICH THE GOVERNMENT HAS BEEN FOLLOWING UP AND IMPLEMENTING PREVIOUS RECOMMENDATIONS

99. The Commission on Human Rights in its resolution 1995/55 and the General Assembly in its resolutions 49/199 and 50/178 have requested the Special Representative, in collaboration with the Cambodia office of the Centre for Human Rights, to continue to evaluate the extent to which the recommendations made by the Special Representative in his reports were followed up and implemented by the Government of Cambodia.

100. Under the direction of the Director of the Cambodia office of the Centre for Human Rights and following guidance provided by the Special Representative a schedule has been prepared setting out a summary of all past recommendations and details of known follow-up and implementation. The schedule has been prepared in accordance with the subheadings under which the Special

Representative has produced his reports, viz. by reference to particular human rights (rights to health, to culture, to education, judicial independence, etc.). The same format has been followed in the recommendations contained in the present report.

101. The Special Representative is of the opinion that the schedule in its present form is unsuitable for reproduction. It is lengthy (54 pages), a result of the many recommendations that have been made. It is unduly chronological rather than conceptual. It has not been provided to the Cambodian Government for comment owing to the short time since its completion and since the Special Representative's last report to the General Assembly in November 1995.

102. By reason of the developments reported in section III of this report, the Special Representative considers that it is timely to conduct a full review, to include in it the recommendations contained in the present report and to provide the schedule of known actions to the Government of Cambodia for comment, evaluation and correction in time to be included in the report of the Special Representative to the General Assembly in November 1996. This process will provide a useful interlude and the opportunity for a new beginning to the functions of the Special Representative and the evaluation of the follow-up and implementation of the recommendations by the Cambodian Government.

103. A review of the schedule prepared by the Cambodia office of the Centre for Human Rights reveals that in some areas (e.g. right to health, culture, education and reporting obligations) there has been good progress and appropriate follow-up. In other areas, such as judicial independence and the rule of law, police and military, prisons and other custodial institutions, and the rights of vulnerable groups, implementation and follow-up have been much more limited. In some areas, such as the Press Law, the recommendations of the Special Representative were, in important respects, not followed. Some follow-up to the recommendations and advice of the Special Representative is required by the United Nations itself, including for the provision of ongoing technical support and assistance. The recommendations of the Special Representative for the taking of "active and creative steps within the administration of the United Nations Office at Geneva to meet the difficulties outlined [in the report of the Cambodia office of the Centre]" and since elaborated by representations made by the Special Representative (E/CN.4/1995/87/Add.1, p. 17) have not, for the most part been followed. A fuller report, with appropriate detail which has first been made available for comment to those affected, will be provided to the General Assembly in November 1996.

104. The Special Representative welcomes the attention given by the Co-Ministers of the Interior to his human rights recommendation No. 10/95 (see annex II) and for their answer (annex III), forwarded to him by the Ministry of Foreign Affairs and International Cooperation. He encourages the Ministry of the Interior and other ministries concerned also to respond to previous recommendations.

V. RETIREMENT OF THE SPECIAL REPRESENTATIVE

105. This report will be the last by the present Special Representative of the Secretary-General for human rights in Cambodia. By reason of his judicial promotion to Australia's Federal Supreme Court, he has notified the Secretary-General, the High Commissioner for Human Rights, His Majesty the King of Cambodia and the Royal Government of Cambodia that he will be obliged to retire from the position as soon as is convenient for the Secretary-General. In the meantime, he continues to fulfil the duties as required by the Secretary-General and his mandate to ensure that those functions are performed until a successor is appointed.

106. The Special Representative feels bound to report that during his sixth and seventh missions (August 1995, January 1996) the Co-Prime Ministers were not available to meet him as they had been on earlier missions. It is thus a full year since the Special Representative was granted the honour of a meeting with one of the Co-Prime Ministers (His Excellency Samdech Hun Sen, Second Prime Minister on 25 January 1995). This fact made more difficult the performance by the Special Representative of his mandate under Commission on Human Rights resolution 1993/6 of 19 February 1993 to "maintain contact with the Government of Cambodia" and to "assist the Government in the promotion and protection of human rights" (para. 6 (a) and (c)). It occurred after the General Assembly adopted resolution 50/178, on 11 December 1995, strongly encouraging the Government of Cambodia to continue to cooperate with the Special Representative (para. 7). It made more difficult the exchange of opinions and viewpoints which is important to the utility of the advice of the Special Representative to the Cambodian Government on human rights matters.

107. The promotion of a culture of diversity of opinion and pluralism of its expression still has some way to go in Cambodia. However, as the present and past reports of the Special Representative demonstrate, important progress has been made in human rights in Cambodia. The Special Representative has always readily acknowledged and reported such progress, whilst pointing out apparent departures from human rights standards in other areas where further advice and technical assistance to attain those standards are required. The Special Representative considers that it would be particularly unfortunate if, as a result of advice and recommendations which were in part unwelcome, the Government of Cambodia at its highest level did not feel able to receive the Special Representative of the Secretary-General. It may be hoped that the appointment of a new Special Representative will help the process of communication which, for whatever reason, has been interrupted in the past year. It is in that period that the Special Representative has been obliged to express opinions concerning the human rights implications of highly charged political events in Cambodia that appear to have occasioned the difficulties that have arisen which must, in candour, be referred to in this report. No other explanation has been given to the Special Representative for the breakdown in communications which previously were both useful and cordial. It is inherent in the issues of human rights and in the office of a special representative of the Secretary-General or special rapporteur that there will sometimes be strongly held and expressed differences of view. Experience in the field of human rights suggests that discussion and the exchange of viewpoints are more likely to narrow differences and to repair disagreements than is the refusal, or failure, to meet.

108. The High Commissioner for Human Rights had arranged a visit to Cambodia in December 1995. By reason of urgent obligations of his office, the visit had to be postponed. The Special Representative recommends that the visit by the High Commissioner be rescheduled without delay and that the new Special Representative be appointed without undue interruption in the conduct of the mandate. In that way the momentum of United Nations technical advice and assistance to Cambodia in the field of human rights will be continued at a sensitive time. A new start could then be made to the benefit of the people of Cambodia. Their past suffering and the optimism and hope of so many officials, NGOs and individuals in Cambodia, as well as the needs disclosed in this and earlier reports of the Special Representative, require the continued operational presence of the Cambodia office of the Centre for Human Rights and the continued activities of the Special Representative of the Secretary-General for human rights in Cambodia, at least for the time being.

109. On his retirement, the Special Representative pays his profound respects to His Majesty the King of Cambodia, to the Royal Government of Cambodia, to the Director and officers of the Cambodia office of the Centre for Human Rights, to the officers of the Centre for Human Rights in Geneva and New York, to the Representative of the Secretary-General in Cambodia, to the United Nations Programmes, Funds and agencies represented in Cambodia, to the United Nations Volunteers working throughout the country, to members of the Diplomatic Corps in Phnom Penh, to the members of the human rights NGOs in Cambodia and to the valiant people of Cambodia who will always enjoy the admiration and affection of the Special Representative. He will ever be conscious of the honour it has been to serve in Cambodia as the Special Representative of the Secretary-General of the United Nations.

Notes

1/ See, for example, His Majesty's address on 4 November 1995 on the second anniversary of the Royal Government quoted in The Cambodia Daily, 6 November 1995; His Majesty's statement on 5 December 1995 that he would not inaugurate further national parks as their integrity was not being protected; and His Majesty's annual message to the people of Cambodia 1995 reported in Phnom Penh Post, 29 December 1995.

2/ See Global Witness, Forests, Famines and War. The Key to Cambodia's Future, London, 9 March 1995; Press briefing, 1 December 1995; Phnom Penh Post, 15 December 1995, p. 1.

Annex I

PROGRAMME OF THE SEVENTH MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

(6-16 January 1996)

Saturday, 6 January 1996

Arrival at Pochentong International Airport

Sunday, 7 January 1996

Meeting with H.E. Kep Chuktema, Governor of Rattanakiri Province

Meeting with Mr. Benny Widyono, Representative of the Secretary-General in Cambodia

Briefing by staff of the Cambodia office of the Centre for Human Rights

Monday, 8 January: Environment/development/minority rights

Technical round-table briefing by NGOs/IGOs on development, environment and minority issues organized by the International Development Research Center with CIDSE, UNFPA, PSRA, AICF/USA, and a legal advisor to National Assembly

Briefing by the Cambodia office of the Centre for Human Rights on international and national protection of minorities, the draft Nationality Law and the draft law on the protection of the environment

Briefings on the situation of ethnic minorities in Cambodia organized by the Preah Sihanouk Raj Academy (Chinese, Cham, Lao, Vietnamese and Highland minorities)

Meeting with Mr. Vincent Fauveau, representative of UNFPA

Tuesday, 9 January: Environment/women's rights

Meeting with Mr. William Shawcross, international journalist and author

Meeting with H.E. Mok Mareth, Minister of Environment

Working meeting with 24 organizations members of the NGO Committee on CEDAW and the Working Group on Cambodian Women's Rights

Meeting with H.E. Ms. Im Run, Under-Secretary of State for Women's Affairs

Visit to Khemara Shelter for Women Victims of Domestic Violence

Brief visit to one of Phnom Penh's red light districts

Round-table with Cambodian women organized by the NGO Committee on CEDAW

Meeting with Ms. Sokhua Mu Leiper, Adviser to the First Prime Minister for Women's Affairs

Wednesday, 10 January: Visit to Rattanakiri Province

Departure for Rattanakiri Province

Meeting with NGOs/IGOs active in the province (CARERE, Catholic Office for Emergency Relief and Refugees, CIDSE, IDRC, Health Unlimited)

Meeting with the representatives of the human rights association ADHOC

Meeting with H.E. Bun Hom Oun Many, Second Vice-Governor of Rattanakiri Province

Meeting with officials of the Departments of Agriculture, Forestry, Rural Development, Environment and Land-title

Meeting with H.E. Bun Hom Oun Many, senior officials of the province, international aid agencies and local NGOs

Thursday, 11 January

Field visit to two ethnic Jarai villages located in a concession area in Au Ya Dao district (meetings with village leaders, elders and villagers)

Friday, 12 January

Meeting with the President of the Tribunal and the Prosecutor

Return to Phnom Penh

Meeting with H.E. Hong Sun Huot, Minister of Rural Development and Chairman of the Inter-Ministerial Committee for the Development of Highland Minorities

Meeting with H.E. Dr. Tao Seng Huor, MP, Minister of Agriculture, Forestry and Fisheries

Saturday, 13 January: Freedom of expression/political rights

Meeting with representatives of the NGO Committee on CEDAW and representatives of the Working Group on Cambodian Women's Rights

Meeting with H.E. Kem Sokha, MP and Chairman of the National Assembly's Commission for Human Rights and Reception of Complaints

Meeting with H.E. Son Sann, Dean of the National Assembly, Son Soubert and other MPs of BLDP

Monday, 15 January

Meeting with H.E. Khieu Kannharit, Secretary of State for Information

Lunch convened by Mr. Anthoni Kevin, Australian Ambassador, with Ambassadors and diplomatic representatives of Canada, Germany, Malaysia and the United Kingdom

Meeting with H.E. Ung Huot, Minister of Foreign Affairs and International Cooperation

Brief discussion with members of a delegation of DANIDA

Press conference for the Cambodian media

Press conference for the foreign media

Meeting with Mrs. Christine Norodom-Alfsen, wife of HRH Prince Norodom Sirivudh, former Minister of Foreign Affairs and Secretary-General of FUNCINPEC party

Tuesday, 16 January

Meeting with the Ambassadors of the Association of South-East Asian Nations and diplomatic representatives of the Lao People's Democratic Republic, the Philippines, Singapore, Thailand and Viet Nam

Meeting with a representative of Men Sarun agro-business company

Meeting with Mr. Sam Rainsy, former MP and Minister of Economy and Finance

Meeting with diplomatic representatives accredited to Cambodia of the Embassies of Australia, China, France, Germany, the Lao People's Democratic Republic, Malaysia, the Russian Federation, the United Kingdom, the United States of America, Viet Nam and the Representative of the Secretary-General in Cambodia

Meeting on human rights priority areas requiring assistance with bilateral and multilateral assistance donors: UNHCR, UNFPA, UNESCO, UNICEF, the Ministries of Foreign Affairs of Denmark, France, Indonesia and the United Kingdom, AUSAID, USAID and the Konrad Adenauer Foundation

Departure

Annex II

HUMAN RIGHTS RECOMMENDATIONS 1995-1996 (AUGUST 1995-JANUARY 1996)

[Original: English]

HR REC 10/95 (25 August 1995): Immigration circulars issued by the Ministry of the Interior. During his sixth mission to Cambodia, the Special Representative received guarantees from co-Interior Minister, His Excellency Sâr Kheng, that (a) the circulars issued by the Ministry would not be implemented; (b) no detention centres for illegal aliens would be established; (c) no mass expulsions of illegal aliens would be carried out; (d) a case-by-case determination of the status of aliens living in the Kingdom would be conducted; and (e) the Law on Immigration would not be implemented until the Law on Nationality was adopted. The co-Interior Ministers reiterated these guarantees in a written communication to the Special Representative (see the text of the letter in annex III of this report).

HR REC 11/95 (20 November 1995): Unlawful detention of a member of the National Assembly. No response, no action taken. The MP, former Minister of Foreign Affairs HRH Prince Norodom Sirivudh, was placed under house arrest while being an MP; when his parliamentary immunity was lifted, he was then detained for several weeks until he was forced into exile.

HR REC 1/1996 (16 January 1996): Draft Nationality Law. At the time of printing this report, no response had been received.

Annex III

LETTER DATED 25 AUGUST 1995 FROM MR. MICHAEL KIRBY, SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA, ADDRESSED TO HIS EXCELLENCY UNG HUOT, MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION OF CAMBODIA

HR Rec: 10/95

Your Excellency,

1. I write in my capacity as the Special Representative of the Secretary-General for human rights in Cambodia. I would like to thank you again for meeting me at such short notice on the last day of my sixth mission to Cambodia. I greatly appreciated the opportunity to speak with you and with your colleagues in the Ministry. I also appreciate your warm welcome to me.

2. You may recall that, in an earlier human rights recommendation related to the Immigration Law (No. 19/94, dated 16 September 1994, copy attached), I expressed my concerns regarding, inter alia, the lack of provisions to safeguard against the risk of collective or mass expulsions and the lack of legal safeguards in the deportation of aliens. I also pointed out in that recommendation that a Nationality Law was needed to define a Cambodian "national" before the Immigration Law could be implemented. Subsequently the Secretary-General of the United Nations wrote to the Cambodian Government to seek assurances that collective or mass expulsions would not occur. His Royal Highness the First Prime Minister of Cambodia gave his assurance in his letter dated 19 September 1994 to the Secretary-General that mass detention or collective expulsion of aliens would not occur. This assurance was repeated in paragraph 7 of a joint communiqué of the Cambodian and Vietnamese Governments dated 17 January 1995. I must commend the Royal Government for making this solemn and important undertaking.

3. Like all sovereign countries, the Kingdom of Cambodia has the right and duty to control its borders and to establish legal procedures for the entry and exit of aliens. If an alien enters Cambodia illegally or violates the terms of his or her visa, under the Immigration Law, the Minister of Interior may order the alien to be deported. To be consistent with the Immigration Law and international human rights treaties to which Cambodia is a party, this requires a case-by-case decision-making process in which each individual facing deportation is afforded the opportunity to establish his or her right to remain in Cambodia.

4. However, in the course of my recent sixth visit to Cambodia, I read the English translation of Ministry of Interior directives and a circular related to aliens. These include:

- Directive number 017 of the Ministry of Interior, dated 8 June 1995;

- Directive number 021 of the General Department of National Police, dated 12 July 1995;

- Circular letter number 005 of the Ministry of Interior, dated 11 July 1995.

5. Directive number 017, titled "Implementation Plan: Measures and Solutions to Prevent the Influx of Illegal Immigrants," states that "illegal aliens who have already been in Cambodia shall be repatriated immediately". It orders the "registration of all aliens and to distinguish nationals clearly" and states that "This plan should be applied from 15 June until 30 November".

6. Directive number 021, entitled "Measures for Implementing Directive Number 017", orders provincial and municipal authorities to, inter alia, set up "immigration centres for coping with the problems of illegal aliens and those who abuse the law" and to expel from Cambodia all illegal aliens and those who abuse the law "within 10 days". I have received two apparently reliable reports that in the Province of Kampong Som (Sihanoukville) a mass detention centre is being established in Prey Nup district.

7. Directives 017 and 021 appear to be capable of serious abuse. Under these directives local authorities are empowered to identify "illegal aliens" and to take action to expel them. This may lead to inconsistent and arbitrary enforcement in which each province or municipality will determine, without any objective criteria, who is, and who is not, an "illegal alien".

8. In the absence of a Nationality Law it is not possible to make a legal determination as to who is, and who is not, an "alien". In the absence of appropriate subordinate legislation under the Immigration Law specifying the legal requirements for the entry, stay and exit of aliens, it is not possible to make a legal determination as to who is and who is not an "illegal alien". In the absence of appropriate subordinate legislation under the Immigration Law establishing deportation procedures, it is not possible to carry out deportations of individuals in a fair, just and legal manner respecting the right of each individual to due process of law.

9. Directives 017 and 021 appear to contradict article 38 of the Immigration Law, which states that deportation of an alien may occur only upon the "signature of the Minister of Interior". Thus, provincial and municipal authorities do not appear to have the legal authority to order a deportation. The directives also appear to contradict article 13 of the International Covenant on Civil and Political Rights, to which Cambodia is a party, and article 7 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live" (General Assembly resolution 40/144 of 13 December 1985, annex), which provides that "an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law ... ."

10. Paragraph 3 (a) of Circular letter 005 suggests that aliens who hold Cambodian passports or identification cards but who cannot speak Khmer may be considered to be holding fraudulent documents and therefore considered to be illegal aliens. This raises several concerns. First, there are many thousands of people in Cambodia who hold valid Cambodian documents but who cannot speak Khmer, such as the non-Khmer minorities of the north-east, Cambodians of ethnic Vietnamese or Chinese origin and returning members of the

Cambodian diaspora. Their language abilities have no relationship to their rights as Cambodian citizens. In most, if not all, countries of the world there are citizens who, for various reasons, cannot speak the national or official language.

11. The question of whether a Khmer language test may be used as one criteria for granting nationality to aliens is a matter properly decided only by the National Assembly in its consideration of the Nationality Law, a draft of which, I understand, is currently pending before the Council of Ministers. Circular letter 005 appears, however, to have pre-empted the proper determination of that issue and defined Cambodian nationality or residence on the basis of Khmer language ability. In my respectful opinion, this is a violation of article 33 of the Constitution which states that "Khmer nationality shall be determined by a law". In addition, a language requirement to determine legality of presence in Cambodia would appear to violate article 27 of the International Covenant on Civil and Political Rights, which guarantees, inter alia, the right of ethnic or linguistic minorities "to use their own language".

12. I am aware of and grateful for the commitment of the Royal Government to avoid mass detentions or collective expulsions. During my recent visit to Cambodia, I raised these matters with His Excellency Sar Kheng, the Deputy Prime Minister and co-Minister of Interior, and was assured by him that mass detentions and collective expulsions of aliens will not occur. I am grateful to His Excellency for this clarification. However, I wish to recommend the following:

12.1. As long as Directives 017 and 021 and Circular letter 005 remain in force, the provincial and municipal authorities may attempt to enforce them. I thus recommend that Directives 017 and 021 and Circular letter 005 should be rescinded formally and in writing and that provincial and municipal authorities should be notified in writing without delay that it is the policy of the Royal Government not to allow the mass detention or collective expulsion of aliens;

12.2. Any plans or activities by provincial or municipal authorities to establish mass detention centres should be prohibited;

12.3. I note that there is already very good cooperation between the Cambodia office of the Centre for Human Rights and the Ministry of Interior on these matters. As you know, the office of the Centre for Human Rights in Cambodia is providing a consultant to assist the Ministry of Interior in formulating appropriate subordinate legislation for the implementation of the Immigration Law and the drafting of the Nationality Law to ensure conformity with Cambodia's Constitution and its international human rights obligations, particularly the International Covenant on Civil and Political Rights. I would thus recommend that no policy be implemented in these areas until the work of the consultant is completed. It is not expected that this work will be unduly delayed.

13. I would be most grateful if the Royal Government would notify me of its decisions in this respect, so that I can report to the General Assembly at its

next session in November 1995, the Commission on Human Rights in March 1996 and the Secretary-General, who has expressed an interest in the implications of the above.

14. As always, and consistent with our respective mandates, the office of the Centre for Human Rights in Cambodia and I stand ready to assist the Royal Government in any way deemed appropriate in implementing these recommendations or any matter connected with them.

15. Please accept, Your Excellency, the assurances of my highest consideration.

(Signed) Michael Kirby
Special Representative of the United Nations
Secretary-General for human rights in Cambodia

cc: H.R.H. Samdech Krom Preah Norodom Ranariddh, First Prime Minister
H.E. Samdech Hun Sen, Second Prime Minister
H.E. Sar Kheng, Deputy Prime Minister and co-Minister of Interior
H.E. You Hockry, co-Minister of Interior
H.E. Chem Snguon, Minister of Justice

Annex IV

Answer received from the Ministry of the Interior concerning HR REC 10/95

UNOFFICIAL TRANSLATION

KINGDOM OF CAMBODIA
Nation, Religion, King

Ministry of Interior
Ref. No.: 961: Phnom Penh, 17 October 1995

Ministers of Interior
Respectfully to
H.E. Ung Huot, Minister of Foreign
Affairs and International Cooperation

Subject: PROPOSED RESPONSES TO THE LETTER OF MR. MICHAEL KIRBY, THE SPECIAL REPRESENTATIVE FOR HUMAN RIGHTS OF THE UNITED NATIONS DATED 25 AUGUST 1995

With reference to the above-mentioned subject and as this matter is related to the competency of the Ministry of Interior, we have the honour to bring to the attention of Your Excellency that:

1. The Ministry of Interior would like to express its agreement that the Nationality Law should be adopted first, before starting the implementation of the Immigration Law concerning the recognition of nationality, in order to avoid absolutely the occurrence of mass expulsion of illegal aliens.

2. In any decision relating to the expulsion of aliens who have illegally entered and settled in the country, the Ministry will always apply the principle of deciding on a case-by-case basis.

3. The Ministry of Interior has re-examined Directives Nos. 017, 021 and Circular No. 005, in order to make sure that those Directives and Circulars will not affect or violate the rights of aliens who had infiltrated into the Kingdom of Cambodia, and the Ministry would like to express its gratitude to H.E. Justice Michael Kirby for expressing his concerns in this field.

4. Concerning paragraph 8 of the above-mentioned letter, the Ministry of Interior has already completed the drafts of some documents, such as sub-decrees and directives, and has submitted them to the Royal Government for approval and decision to continue the implementation of the Immigration Law. Therefore, some articles of the Immigration Law have not yet been implemented by the authorities. Regarding the Nationality Law, the draft prepared by the Ministry of Interior, which is the concerned ministry, has already been examined and approved by the Council of Ministers and is awaiting the examination by the Legislation Commission of the National Assembly.

5. Concerning paragraphs 10 and 11, the Ministry of Interior's authorities have never considered as aliens persons who do not speak Khmer. But some documents used by the suspected persons were produced by dishonest persons. The use of fake documents is a criminal offence under the Transitional Criminal Law (Translator's note: Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period, Supreme National Council decision of 10 September 1992).

6. Concerning paragraph 12, we would like to express our agreement, as mentioned in paragraphs 1, 2 and 3 above, and we will make sure that the individual rights will not be affected in the implementation of the Immigration Law.

Please accept, Excellency, the assurances of our highest consideration.

(Signatures and official seal)

Sâr Kheng You Hokry
(Translator's Note: co-Ministers of Interior)

cc: Office of the Council of Ministers
Special Representative of the United Nations
Secretary-General for human rights in Cambodia

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